IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 32122 of 2007(Y)

PETITIONER:

C.I.DAS, AGED 59 YEARS,
S/O.LATE KRISHNAN ITTIYATHI, VALIYAPARAMBIL
HOUSE, DEVALOKAM P.O., MUTTAMBALAM,
KOTTAYAM.

BY ADV. SRI.SANTHOSH MATHEW,
ADV. SRI.SATHISH NINAN.

RESPONDENTS:

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1. **KOTTAYAM MUNICIPALITY, KOTTAYAM**
   REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
   KOTTAYAM.

2. **SRI.P.K.MOHAN DAS, S/O.C.I.KRISHNAN,**
   `MOHAN VILLA', PANAYAKKAZHIPPU KARA,
   MUTTAMBALAM VILLAGE, KOTTAYAM TALUK.

3. **SMT.ANCY ALEX, W/O.ALEX V.CHACKO,**
   VELLAPPALLY MATTATHIL HOUSE, PEROOR P.O.,
   PEROOR KARA, PEROOR VILLAGE, KOTTAYAM.

4. **SMT.SHEEJA JOJO, W/O.JOJO LUKOSE,**
   KARAKKATTU HOUSE, KAIPUZHA P.O.,
   KAIPUZHA VILLAGE, KOTTAYAM.

5. **SMT.REKHA JIBI JOHN, W/O.JIBI JOHN,**
   PANACKAL HOUSE, MUTTAMBALAM P.O.,
   KOTTAYAM.

W.P.(C). NO.32122/2007:

6. SRI.JIBI JOHN, PANACKAL HOUSE,
MUTTAMBALAM P.O., KOTTAYAM.

7. THE SUPERINTENDENT OF POLICE,
KOTTAYAM.

***ADDL. RESPONDENTS 8 TO 10 IMPLEADED:**

***8. THE DISTRICT COLLECTOR,**
KOTTAYAM.

***9. THE CHIEF TOWN PLANNER, (VIGILANCE),**
THIRUVANANTHAPURAM.

***10. THE DISTRICT TOWN PLANNER, KOTTAYAM.**

***ADDL. RESPONDENTS 8 TO 10 IMPLEADED VIDE ORDER DATED 19/11/2007 ON I.A. 15202/2007.**

BY SR. GOVT. PLEADER SRI. K.J. MOHAMMED ANZAR,
ADV. SRI.SIBY MATHEW - R1,
SRI.A.A.MOHAMMED NAZIR,
SRI.C.S.MANU - R2,
SRI.S.K.PREMRAJ,
SRI.C.C.THOMAS.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C)No. 32122 OF 2007

DATED THIS THE 3RD DECEMBER, 2007

J U D G M E N T

It is almost conceded by the learned counsel for the petitioner Sri. Santhosh Mathew and by Sri. C.C.Thomas, learned Senior counsel for the contesting party respondents 3 to 6 that this writ petition has become virtually infructuous. The writ petition was filed challenging what is described as the illegal and arbitrary manner in which the building permit for the construction of a high rise building within the area of the first respondent Kotayam Municipality has been renewed as per Ext.P4 and transferred to respondents 3 to 5 as per Ext.P6. The above renewal and transfer, it is alleged is in flagrant violation of Rule 15 A of the Kerala Municipality Building Rules, 1999. The grievance voiced by the petitioner is that even though he had preferred a detailed objection in the matter of Exts.P4 and P6 before the first respondent on 16-10-2007 as evidenced by Ext.P7, no action was taken by the concerned authorities for stopping the constructions on the strength of Exts.P4 and P6.

2. The petitioner points out that on account of inertia on the part of the authorities an accident occurred on 21-10-1996 at the construction site resulting in the death of two nuns. The prayers in the

writ petition are inter alia for quashing Exts.P4 and P6 by issuing a writ of certiorari and also for a writ of mandamus commanding the first respondent Municipality to demolish the illegal constructions held out by respondents 3 to 5 on the basis of Ext.P6.

3. A perusal of Ext.P7 objections submitted by the petitioner would show that the main plank of the petitioner's objection is that the access which has been provided to the proposed building does not have the statutorily prescribed width of five metres and that Rule 19 of the Kerala Municipality Building Rules 1984 is violated. An agreement for sale/power of attorney relied on by the first respondent and the predecessors of respondents 3 to 5 to which the petitioner is apparently a party is disowned by the petitioner in Ext.P7. But it is now submitted that the petitioner has conveyed his rights over the property to which the claims title and possession to Sri Jojo Lukose, husband of the 4th respondent and through an additional counter affidavit submitted by the 5th respondent, Ext.R5(k) letter issued by the petitioner to the Secretary of the first respondent Municipality is also placed on record. It is stated very clearly in Ext.R5(k) letter that as per agreement for sale dated 15-11-2007 the petitioner has agreed to sell his properties to Sri Jojo Lukose, husband of the 4th respondent

who is admittedly one of the partners of M/s. Malayalam Builders who have presently taken up the construction. It is also stated in Ext.R5(k) that the petitioner has permitted the said property situated in R.S.No.58 Block No.190 of Muttambalam village to be used as means of access/way to the apartment complex constructed by Malayalam Builders situated on the adjacent property.

4. The Municipality has filed a counter affidavit in this case supporting the stand of respondents 3, 4 and 5 that the constructions are proceeded on the basis of validly issued building permits.

5. Today it is submitted before me by the learned counsel for the petitioner that the petitioner having conveyed his rights to the husband of the 4th respondent, a partner of Malayalam Builders, is not keen of pursuing the grounds raised in the writ petition.

6. For all the above reasons, the writ petition will stand disposed of declining the prayers sought for.

Since W.P.(C)No.34540/2007 is pending, keep the judges papers in this case along with W.P.(C)No.34540/2007.

SD/-

(PIUS C.KURIAKOSE, JUDGE)

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